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**Digital World Solutions and Linda K. Hamp.** Case 21-CA-32263

September 30, 1998

**DECISION AND ORDER**

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by Linda K. Hamp, an individual, on September 9, 1997, the General Counsel of the National Labor Relations Board issued a complaint on January 23, 1998, against Digital World Solutions, LLC, the Respondent, alleging that it violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charge and the complaint, the Respondent failed to file an answer.

On April 27, 1998, the General Counsel filed a Motion for Summary Judgment. On April 29, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Thereafter, Mark Hagan, describing himself as "a member of Digital World Solutions, LLC, and authorized to act on its behalf," filed an affidavit stating, inter alia, the following: (1) that he will be responsible for ensuring that the Respondent ceases and desists engaging in the unfair labor practices it is alleged to have committed; (2) that in April 1998, the Respondent offered reinstatement to the two alleged discriminatees, reinstated those individuals to their former positions, and in May 1998, discharged them both for cause; (3) that the Respondent has paid each of the alleged discriminatees \$1000 in settlement of the wages and benefits they may have lost as a result of their suspension and/or discharges; and (4) that the Respondent will otherwise comply with such remedial steps as the General Counsel has requested in his Motion for Summary Judgment. The affidavit does not otherwise respond to, contest, or dispute the allegations set forth in the complaint.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by suspending and/or discharging employees Linda K. Hamp and Shawn Lichtman because they each engaged in the discussion of overtime pay with the Respondent in the presence of other employees of the Respondent, and that the Respondent took those actions in order to discourage other employees from engaging in protected concerted activities.

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause

is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all allegations in the complaint shall be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 15, 1998, notified the Respondent that unless an answer were received by April 21, 1998, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Nevada corporation, at its facility in La Jolla, California, is engaged in the business of marketing PrimeStar satellite systems to customers throughout the United States. During a representative 12-month period ending January 15, 1998, the Respondent derived gross revenues in excess of \$500,000, and in that same period sold goods and services in connection with its operations valued in excess of \$50,000 to customers located outside the State of California as well as provided services valued in excess of \$50,000 to PrimeStar, an enterprise directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On August 25, 1997, the Respondent suspended and on August 29, 1997, discharged employee Linda K. Hamp because during August 1997 Hamp had engaged in protected concerted activities by discussing overtime pay with the Respondent in the presence of other employees of the Respondent. On August 25, 1997, the Respondent discharged employee Shawn Lichtman because during August 1997 Lichtman had engaged in protected concerted activities by discussing overtime pay with the Respondent in the presence of other employees of the Respondent. The Respondent took these actions against Hamp and Lichtman in order to discourage other employees from engaging in these or other protected concerted activities.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act. The Respondent has thus engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

<sup>1</sup> With respect to the claims made in the Hagan affidavit regarding reinstatement and payment of backpay to employees Hamp and Lichtman, we note that such matters can be considered in compliance.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by suspending and discharging employee Linda K. Hamp and discharging employee Shawn Lichtman, we shall order the Respondent to offer them immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the unlawful action taken against them. Back-pay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful suspension and discharges, and to notify Hamp and Lichtman in writing that this has been done.

## ORDER

The National Labor Relations Board orders that the Respondent, Digital World Solutions, LLC, La Jolla, California, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Suspending or discharging employees because they discuss overtime pay with the Respondent in the presence of other employees or otherwise engage in protected concerted activities or to discourage other employees from engaging in these or other concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Linda K. Hamp and Shawn Lichtman full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Linda K. Hamp and Shawn Lichtman whole for any loss of earnings and other benefits suffered as a result of the unlawful action taken against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful suspension of Linda K. Hamp and the unlawful discharge of Hamp and Shawn Lichtman and, within 3 days thereafter, notify Hamp and Lichtman in writing that this has been done.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in La Jolla, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 25, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1998

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Sarah M. Fox, Member

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Wilma B. Liebman, Member

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Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT suspend or discharge employees because they discuss overtime pay with us in the presence of other employees or otherwise engage in protected concerted activities or to discourage other employees from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Linda K. Hamp and Shawn Lichtman full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Linda K. Hamp and Shawn Lichtman whole for any loss of earnings and other benefits suffered as a result of the unlawful action taken against them.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful suspension of Linda K. Hamp and the unlawful discharges of Hamp and Shawn Lichtman, and, WE WILL within 3 days thereafter, notify Hamp and Lichtman in writing that this has been done.

DIGITAL WORLD SOLUTIONS, LLC